

DEPARTMENT OF TOURISM & STATE DEVELOPMENT
STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

AGREEMENT made and entered into this 22nd day of November 2010 by and between Department of Tourism & State Development, a state agency, of 711 E. Wells Ave., Pierre, SD 57501, (the "State") and Global Insight (USA), Inc., 24 Hartwell Avenue, Lexington, MA 02421 (the "Consultant").

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will provide services as outlined in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

The State and Consultant agree that any and all communications between the State and Consultant, whether written or verbal, are to be considered private and confidential. Both the State and Consultant agree, that at no time, either during or after the term of this Agreement, will either the State or Consultant disclose any confidential information to any person(s) whatsoever, except with the prior written consent of the other party. Upon the termination of this Agreement, all documents, papers and other materials associated with the projects outlined in this Agreement will be returned to their respective owners.

2. The Consultant's services under this Agreement shall commence on November 22, 2010 and end on January 31st, 2011, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities.

4. The State will make payment for services upon successful completion of the services describe within Exhibit A. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$33,600.00. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher.

5. Except as detailed in an applicable Statement of Work, the Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force applicable insurance coverage of the types as follows:

A. Commercial General Liability Insurance: The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a

limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance: The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

C. Worker's Compensation Insurance: The Consultant shall procure and maintain workers' compensation and employers' insurance as required by South Dakota law.

The Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly

identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Melissa Miller, (605) 773-3301 on behalf of the State, and by Susan Johnson, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

16. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

17. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

IHS GLOBAL INSIGHT (USA) INC.

BY: 

BY: 

Richard Benda
Department Secretary

John Larson
VP

DATE: 11-29-10

DATE: 11/29/10

- State Agency Coding (MSA Center): 0420
- State Agency MSA Company for which contract will be paid: 3006
- Object/subobject MSA account to which voucher will be coded: 52041100
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Melissa Miller, (605) 773-3301

EXHIBIT A
CONSULTING AGREEMENT

Statement of Work

This Statement of Work dated November 22, 2010 is by and between IHS Global Insight (USA) Inc., ("IHS GLOBAL INSIGHT") and South Dakota Department of Tourism and State Development ("Client") is entered into pursuant to the Consulting Agreement November 22, 2010 between the parties. Capitalized terms in this Statement of Work and not defined herein are used with the meanings ascribed to them in the Agreement.

1. IHS GLOBAL INSIGHT shall furnish to Client the Consulting Services described below:

South Dakota State TSA Analysis, Tourism Satellite Account & Economic Impact of Tourism Report for South Dakota and its 66 Counties

- a. Executive Summary
 - b. Data and analysis/potential implications of findings
2. State/County/Region Level Database of Key SD Travel Metrics
- a. Demographic, visitation, and spending metrics
 - b. Sales and employment data for key tourism feeder industries and all other SD sectors
 - c. U.S. comparative measures
3. Delivery of TSA Analysis via a PDF report and accompanying excel data files.
4. Presentation to be prepared and delivered at dates/times to be determined by mutual agreement. (Travel costs pre-approved and billed separately)
5. One year of ongoing support of results and deliverables through availability of key project management staff.

Data for the 2009 TSA ("Data") to be supplied by the Client. Client hereby agrees to clear any applicable rights for IHS's use of such Data and Client indemnifies IHS with respect to IHS use of such Data.

6. **PAYMENT**

The consulting fee shall be US\$**33,600.00**. One-half of the consulting fee shall be paid upon execution of the Agreement and the remaining one-half shall be paid upon delivery of the Consulting Services. In addition to all of the other rights and remedies, IHS GLOBAL INSIGHT may suspend performance of any or all of the Services hereunder as long as any amount owing hereunder remains unpaid for more than thirty (30) days after the Client's receipt of the invoice.

5. **ACCEPTANCE**

Services are deemed accepted so long as IHS GLOBAL INSIGHT has performed tasks in accordance with the scope of Services as set forth in Section 1 above.

6. **ADDITIONAL SERVICES**

Any services not specifically set forth herein are excluded and will be quoted and provided on additional Statement of Work.

7. **OTHER TERMS AND CONDITIONS**

The following terms and conditions, if any, are to be deemed part of the Agreement. To the extent that any of the following terms and conditions are inconsistent with the terms and conditions of the Agreement, the

following terms and conditions shall govern. All other terms and conditions not modified and amended below shall remain in full force and effect.

A. Ownership/Confidentiality:

i. Nothing herein shall be deemed to transfer any proprietary rights to Client in the Services or any part thereof and Client agrees that all such rights belong to and shall continue to belong to IHS GLOBAL INSIGHT and its licensors. Client agrees to cooperate with the reasonable requests of IHS GLOBAL INSIGHT to protect its proprietary rights.

ii. For purposes of this Agreement, "Confidential Information" shall mean information and data received by either party from the other party. Notwithstanding the foregoing, information and data shall not be deemed to be Confidential Information if such information or data: (i) was substantially known by the receiving party at the time of such disclosure; (ii) was known to the public at the time of such disclosure or becomes known to the public (other than by act of the receiving party) subsequent to such disclosure; (iii) is disclosed lawfully to the receiving party by a third party; (iv) is developed independently by the receiving party without reference to the Confidential Information; (v) is approved in writing by the disclosing party for disclosure by the receiving party; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prior written notice of such required disclosure; (vii) is deemed public record under applicable law. The recipient of any Confidential Information from the other party hereunder shall not disclose to any third party firm, corporation, individual, or other entity, any Confidential Information which it receives from the disclosing party except that IHS GLOBAL INSIGHT may disclose such Confidential Information to its employees in connection with performing the Services hereunder. The receiving party shall use the same degree of care in safeguarding the Confidential Information as the receiving party uses for its own confidential and proprietary information, but in no event less than reasonable care.

B. Disclaimer of Warranty: If notified by Client in writing and in sufficient detail of a material error in the Services within three (3) months of completion, IHS GLOBAL INSIGHT shall use reasonable efforts to attempt to correct such error. Notwithstanding, neither IHS GLOBAL INSIGHT nor its affiliates nor any of their third party licensors warrants the accuracy or adequacy of the Services, nor shall they have any liability for any errors or omissions therein. NEITHER IHS GLOBAL INSIGHT, ITS AFFILIATES, NOR ANY OF THEIR THIRD PARTY LICENSORS MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO RESULTS TO BE OBTAINED FROM THE USE OF ANY DATA OR OTHER SERVICES PROVIDED HEREUNDER OR THAT SUCH DATA OR OTHER SERVICES WILL BE ERROR FREE AND THEY MAKE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

C. Limitation of Liability: EXCEPT FOR CLIENT'S BREACH OF LICENSE GRANTS OR RESTRICTIONS CONTAINED IN THIS AGREEMENT OR EITHER PARTY'S BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST DATA, LOSS OF REPUTATION, LOSS OF GOOD WILL, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR INABILITY TO USE SERVICES. IHS GLOBAL INSIGHT IS NOT LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED IN ANY WAY TO: (i) THE ACCURACY OR COMPLETENESS OF CLIENT INFORMATION; (ii) USE OF SERVICES; OR (iii) MODIFICATIONS TO SERVICES; WHETHER SUCH DAMAGES ARE SUFFERED BY CLIENT OR ANY THIRD PARTY. CLIENT'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY BY IHS GLOBAL INSIGHT ARE SET FORTH IN THIS AGREEMENT.

The revenue associated with this engagement will be accrued by IHS according to the following delivery milestones:

| Milestone Description | Amount |
|---|--------------------|
| State Level Spending, Visitation and Economic Impact Summary | \$20,000.00 |
| Full Results Presentation | \$13,600.00 |
| Total | \$33,600.00 |

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound by the Agreement, have caused this Agreement to be duly executed and delivered.

DEPARTMENT OF TOURISM &
STATE DEVELOPMENT:

By: 

Name: Richard Beards

Title: Secretary TSD

Date: 11/29/10

IHS GLOBAL INSIGHT (USA) INC.

By: 

Name: John Larson

Title: VP

Date: 11/29/10